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IN THE

# Supreme Court of the United States

October Term, 1978

No. 78-1

CHRYSLER CORPORATION,
Petitioner,

v.

CLEMENT GABRIELE,
Respondent.

## BRIEF IN OPPOSITION TO CHRYSLER CORPORATION'S PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Clement Gabriele respectfully requests this Court to deny the request of Chrysler Corporation that it issue a writ of certiorari to review the Judgment of the United States Court of Appeals for the Sixth Circuit.

## THE RESPONDENT CONCURS WITH THE PETITIONER'S STATEMENT OF THE CASE

The Plaintiff-Respondent fully agrees with the chronicle of the proceedings below as it is reflected in the Petitioner's description of the *Questions Presented*, its *Statement of the Case*, and Appendix A, Appendix B and Appendix C, which are attached to its brief in support of its petition.

## REASONS FOR DENYING THE PETITION

The Plaintiff-Respondent asserts that the Petitioner should not be granted a writ of certiorari for the reasons contained below.

### I.

**THE COURT OF APPEALS WAS CLEARLY CORRECT IN HOLDING THAT THE PLAINTIFF WAS NOT PRECLUDED FROM BRINGING SUIT UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT BY HIS FAILURE TO BRING A COMPLAINT BEFORE THE MICHIGAN CIVIL RIGHTS COMMISSION WITHIN THE NINETY DAY TIME LIMIT IMPOSED BY MICHIGAN LAW.**

Petitioner claims that the decision below is erroneous as a matter of law. Petitioner relies on cases which construe 29 U.S.C. 633(b) as being parallel to the strict deferral language under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(c) which require resort to the state agency as a jurisdictional prerequisite to an action under Title VII. The Sixth Circuit Court of Appeals quite correctly has held that a blind application of Title VII reasoning is inappropriate to suits under ADEA. *Laugesen v. Anaconda Co.*, 510 F.2d 307 (6th Cir. 1975).



In the case below the Sixth Circuit Court of Appeals pointed out that the rationale for requiring prior resort to state law under Title VII was that Title VII's legislative history is very clear on this issue. It is equally clear that there is no legislative history under the ADEA which would support petitioner's argument for mandatory prior resort to the state agency. To the contrary, the legislative history of the ADEA evidences a clear intent to avoid administrative delays and procedural pitfalls. Senator Javits, who was the Act's principal sponsor, expressed the policy that the Act's procedural pattern was designed to minimize delays, particularly in the case of older citizens who have fewer productive years left in which to seek relief. *Hearings before the Subcommittee on Labor of the Committee on Labor and Public Welfare, U.S. Senate at S. 830, S. 788 to Prohibit Age Discrimination in Employment*, 90th Cong., 1st Sess. at 24 (1967) reprinted at 111 Cong. Rec. 7076.

The heart of petitioner's argument is that the fact that the language of 29 U.S.C. 633(b) is similar to that of 42 U.S.C. 2000e-5(c) it should be constructed in identical fashion, thus requiring a resort to state remedies. This argument necessarily overlooks the language of 28 U.S.C. 633a which states:

> "Nothing in this chapter shall affect the jurisdiction of any agency of any state performing like functions with regard to discriminatory employment practices on account of age except that *upon commencement of action under this chapter such action shall supersede any State action.*" (emphasis added).

This provision clearly supports the position that the intent of Congress could not have been to require commencement of state action which would be superseded by the filing of a federal action.

Finally, the Court of Appeals was bound to construe the interpretation of 29 U.S.C. 633(b) in connection with 29 U.S.C. 633(a) liberally, because the ADEA is remedial legislation, and therefore entitled to a liberal construction. *Moses v. Falstaff Brewing Corp.*, 525 F.2d 92, 93-44 (8th Cir. 1975); *Skoglund v. Singer Co.*, 403 F. Supp. 797, 801 (D. N.H. 1975); *Woodford v. Kinney Shoe Corp.*, 369 F. Supp. 911, 914 (N.D. Ga. 1973).

Even if the Court were to hold that a Plaintiff has to file with a state agency in order to preserve his rights under the ADEA, the decision would not change the result in this case. In fact the Plaintiff attempted to file a complaint with the Michigan Civil Rights Commission on the 98th day after his discharge, but the commission refused to accept the complaint because it had not been filed within the 90 day time period which had been set by state law.

The Defendant has argued that the 90 day time limit set by Michigan law is binding on the Plaintiff, and that he has lost his right to sue under the ADEA due to his failure to file within the state time limit.

The Court of Appeals rejected this argument, and clearly it was correct in doing so. In setting a 180 day time limit for filing before the ADEA, Congress clearly expressed its view as to the proper balance which should be struck between the need to process such complaints quickly, and the need to avoid blocking the path of the aggrieved party in procedural pitfalls.

Under Title VII two Circuit Courts have held that a Plaintiff will not be barred from pursuing his Federal Claim by a failure to meet a state filing requirement which is shorter than 180 days. See *Davis v. Valley Distributing Co.*, 522 F.2d 827 (9th Cir. 1975), and the



unanimous en banc decision of the Court of Appeals for the Eighth Circuit in *Olson v. Rembrandt Printing Co.*, 511 F. 2d 1228 (8th Cir. 1975).

The logic of these decisions applies with equal weight under the ADEA and squarely supports the decision of the 6th Circuit which was rendered below.

The Defendant at p. 15 of its brief string-cites a long list of authority in favor of the proposition that when a state imposes a time limit for filing a complaint with its administrative agency which is shorter than 180 days, the aggrieved employee must file his complaint within that time limit no matter how short, or else be barred from bringing suit under the ADEA. A cursory analysis of these cases indicates that the view argued by the Defendant has been accepted only at the District Court level. Two of the four District Court cases cited by the Defendant were decided by Courts within the 6th Circuit, and are thus controlled completely and directly by decision of the 6th Circuit in *Gabriele*, below.

The Defendant cites *Reich v. Dow Badische Co.*, — F.2d —, 17 FEP 363 (2d Cir. 1978) in favor of this proposition, but its reading of *Reich* is so totally misguided, that it is clear that the defense counsel is guilty either of gross neglect or a deliberate attempt to deceive the Court.

In *Reich* the Plaintiff was terminated on June 29, 1973 while working in New York. New York required that complaints be filed in writing within one year from the alleged act of discrimination, *supra*, p. 367, and the Court specifically held that the Plaintiff would have saved his federal remedy had he filed as late as April 4, 1974, *supra*, 366. The Court was not presented with the issue of whether the Plaintiff must comply with state filing requirements which are *shorter* than 180 days in

order to preserve his or her right to file suit under the ADEA. The time limit in that case was two times longer than that of the ADEA.

In other cases cited by the Defendant at p. 15 of its brief, as support for the proposition that the state filing time limits must be met, regardless of how short in duration they are, all are District Court cases. *Enos v. Kaiser Industries*, 443 F. Supp. 798 (D.C. 1978); *Graham v. Chrysler Corporation*, Civil Action No. 6-70125, E.D. Mich., March 19, 1976 (J. DeMascio); *Smith v. Crest Communities, Inc.*, 9 EPD Paragraph 10,053 (D.C. W.D. Ky. 1974); *Vaughn v. Chrysler Corporation*, 382 F. Supp. 143 (E.D. Mich. S.D. 1974). *Smith* arises out of the Western District of Kentucky, and *Graham* and *Vaughn* arise out of the Eastern District of Michigan. Both these Courts are within the 6th Circuit and their decisions are overruled by *Gabriele*.

Thus the view of the Plaintiff is the correct one and is the only one which has been accepted at the Circuit Court level.

## II.

## THIS COURT SHOULD DECLINE THE PETITION FOR CERTIORARI

The Plaintiff-respondent contends that the present case is not a proper one for the exercise of the court's discretion to grant a writ of certiorari. The Plaintiff concedes that the decision below is in conflict with those of other Circuits insofar as it holds that an aggrieved party need not resort to applicable state administrative machinery to preserve his or her right to sue under the ADEA. However, there is no such split in authority with regard to the proposition that an



aggrieved party will not be bound by state time limits which are shorter than 180 days. Thus there is a narrow grounds of decision which can control the result in this case. If the Court were to grant certiorari, it would in all likelihood come down with a decision in favor of the Plaintiff-respondent even if it came down against him on the issue of whether state filing is required.

While the larger policy considerations no doubt constitute the primary ground for deciding whether to grant certiorari the Plaintiff-respondent wishes to direct the Court's attention to the specifics of his own particular plight, as he feels that they deserve consideration in the course of the Court's decision whether to grant certiorari.

The Plaintiff was originally discharged on May 9th, 1975. The Plaintiff brought suit in the United States District Court, Eastern District of Michigan on November 6, 1975. His case was dismissed on July 21, 1976. At this time discovery had not yet been completed. The Plaintiff's case has been on appeal for over two years. If the petition for certiorari is granted, he will in all likelihood be tied up on appeal for the better part of another year. In all likelihood it would take another year for discovery to be completed and his case to come to trial. This would mean that his case would be on appeal for three years and would come to trial five years after the date of his termination. The Plaintiff-respondent realizes that all appeals take a long time, but argues that the delay involved in his case has already been unduly long. It would be inappropriate to add an additional year to this appeal when it is highly unlikely that the court would render a decision which would preclude the Plaintiff-respondent from continuing his suit.

## CONCLUSION

In summation the Plaintiff-respondent concedes that there is a split of authority on the issue of whether an aggrieved party must exhaust state administrative procedure in order to preserve his right to sue under the ADEA. However, he denies that there is any split of authority or even any substantial question as to whether or not a state's time limit which is shorter than 180 days is controlling of the aggrieved party's rights under the ADEA. Since the Plaintiff-respondent has already encountered substantial delay, he prays that this Court not add to that delay by hearing argument and rendering a decision on the first issue which is not controlling of his rights.

Respectfully submitted,

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